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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,784	07/02/2003	Ray C. Wasielewski	ORW01-GN004	5434

30074 7590 05/25/2006

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/612,784		WASIELEWSKI, RAY C.	
	Examiner		Art Unit	
	Bruce E. Snow		3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-90 is/are pending in the application.
- 4a) Of the above claim(s) 17,18,38,39,80,81,89 and 90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 19-37, 40-79, 82-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 3/2/06 have been fully considered. Regarding the drawings failing to show the constraining augments are adapted to be fastened to the "acetabular cavity within a hip bone" or "positionable about a femoral member", applicant states one skilled in the art would understand how it could be applied directly to a natural bone joint. The Examiner disagrees and reminds applicant that the Examiner is simply enforcing the requirements set forth by the Patent Office.

Regarding the IDS dated 4/06/04, applicant stated a copy of the international search report was included; no copy was found. Additionally, applicant submitted an IDS dated 12/29/05 stating the same thing; no copy was found nor a listing of the references.

Applicant's amendment to claim 1 overcame the rejection of claims 1-26 under 35 U.S.C. 112, second paragraph.

Regarding the rejection of claims 54-90 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, applicant indicated paragraphs 0010 and 0012 provide support for the language which overcomes the rejection.

Regarding the rejected under 35 U.S.C. 102(e) as being anticipated by Ferree (2004/0024471), applicant's amendments including the language, "while allowing rotational and angular movement.." overcame the rejection.

Regarding the rejection under 35 U.S.C. 102(e) as being anticipated by McGann (6,228,122), applicant has amended the claims adding the language "compression" which fails to define over the rejection. Applicant states there is "no teaching of McGann provid[ing] any indication that the bands maintain the proper engagement of the components while the bands are in compression" which is not commensurate with the scope of the amendment. For example, applicant in claim 73 merely amends the preamble to "a compression constraining device". It is the Examiner's position that the device of McGann is properly termed a compression device; referring to figure 3, the device maintains the ball 36 and cup 26 in compression to prevent dislocation 40. It is clear to one skilled in the art that the mechanics of the device 20 would force the ball into the cup when rotated 42. Please direct the Examiner to the specification for support and better description of the term "compression". The Examiner, on the contrary understand that applicant's device would be in tension when the ball 18 is pulled from the cup 24' as shown in applicant's figure 4.

Regarding the rejection under 35 U.S.C. 103(a) as being unpatentable over Ferree (2004/0024471) in view of English (4,004,300), has been withdrawn.

Information Disclosure Statement

The information disclosure statement filed 12/29/05 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the

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information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

Objection to the drawings

The drawings fail to show all the constraining augments are adapted to be fastened to the "acetabular cavity within a hip bone" or "positionable about a femoral member". Additionally, please direct to the specification for support.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-16, 19-37, 40-79, 82-88 are rejected under 35 U.S.C. 102(e) as being anticipated by McGann (6,228,122).

McGann teaches an augment 20 adapted to be mounted approximately to a rim of an acetabular cup assembly 32 of a hip replacement prosthesis, wherein the augment assists in improving stability, at least temporarily, of a ball joint type coupling 36 between the acetabular cup assembly and a femoral stem 24 of the hip replacement prosthesis; the augment being formed from a biologic and/or absorbable material.

Note column 3, line 28, teaching "biological growth material" which is an absorbable material.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sheldon et al (6,475,243) – note augment 392.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E. Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bes

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

BRUCE SNOW
PRIMARY EXAMINER